

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission
On Its Own Motion

-VS-

Ameren Illinois Company

Investigation into compliance with the
efficiency standard requirement of Section
8-103 of the Public Utilities Act.

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Docket No. 11-0592

**REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 200.830 of the Illinois Commerce Commission’s (“ICC” or “Commission”) Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions (“RBOE”) in the above-captioned matter.

I. INTRODUCTION

On September 23, 2014, the Administrative Law Judge (“ALJ”) issued the Proposed Order (“ALJPO”). On October 7, 2014, in addition to Staff, the following parties filed a Brief on Exceptions (“BOE”): the Ameren Illinois Company (“AIC” or “Ameren” or “Company”) and the People of the State of Illinois (“AG”).

In the following sections, Staff replies to the some of the positions or arguments made in the BOEs that were filed on October 7, 2014. Staff’s failure to address other positions or arguments that were contained in those BOEs should not be construed as agreement with those positions or arguments.

II. PEAK DEMAND REDUCTION

The Commission should reject Ameren's Exception 1 for all the reasons set forth below. The Commission should find Ameren failed to achieve the Section 8-103(c) peak demand reduction goal through its demand response programs for Plan Year 3 ("PY3"), as set forth in Staff's BOE. (Staff BOE at 4-8.)

A. DEMAND RESPONSE IS BEYOND THE SCOPE OF THIS PROCEEDING

Ameren argues that Commission determination of Ameren's compliance with the demand response reduction requirements set forth in Section 8-103(c) of the Illinois Public Utilities Act ("Act") is beyond the scope of this proceeding because the Commission's Initiating Order does not mention demand response in describing the purpose of its investigation for this proceeding. (Ameren BOE at 2.) Staff concurs with Ameren that the Initiating Order in this docket does not address demand response.

In the Initiating Order, the Commission found, among other things, that "the Commission should initiate a proceeding to determine whether the respondents have complied with the incremental energy savings mandated by Section 8-103(b) of the Public Utilities Act, as modified by subsections (d) and (e) of that Section." Initiating Order at 2. Section 8-103(b) deals with incremental annual energy savings goals, whereas Section 8-103(c) deals with demand response. 220 ILCS 5/8-103. To the extent subsections (d) and (e) mention demand response, the reference is made in relation to subsection (c), and those sections should not be read to incorporate demand response into the scope of this docket where it otherwise is clearly outside the scope. 220 ILCS 5/8-103.

The Commission has concluded that “the annual compliance dockets are the appropriate proceedings for the Commission to make findings on the statutory demand response goals.” ICC Docket No. 10-0520, Order at 7 (May 16, 2012). Nonetheless, the Commission made this determination to include the demand response goals in the energy savings goal compliance dockets *after* the Commission entered its Initiating Order in this proceeding, and properly should not make a determination as to demand response goals in this docket.

The due process concerns inherent to the Commission making a determination as to demand response in this docket are real. Potentially interested parties are expected to review Commission initiating orders to determine whether or not they should intervene and participate in the docket – they make this determination based on the scope of the proceeding. Because the Initiating Order in this proceeding did not mention demand response, parties interested in demand response, who may have intervened, were given no indication that demand response would be addressed here. As a result, the Initiating Order lacks sufficient notice to parties not in the docket that demand response may be addressed. Therefore, the Commission should not make a finding as to demand response in this proceeding.

Demand response, however, is a very important and timely topic of interest to the Commission and parties in Illinois. Should the Commission wish to address demand response formally, then the Commission could initiate a separate proceeding to deal with the demand response issues, wherein the scope of the proceeding to include demand response would be clearly articulated from the beginning.

If the Commission finds demand response is within the scope of this proceeding, however, then the Commission should adopt Staff's argument below.

B. IF THE COMMISSION DECIDES TO ADDRESS DEMAND RESPONSE IN THE FINAL ORDER, THE COMMISSION SHOULD REJECT AMEREN'S POSITIONS

1. Demand Reductions from Energy Efficiency Measures should not be used to satisfy the Section 8-103(c) Peak Demand Response Reduction Requirement

For the first time in this proceeding and absent from any testimony in the record, Ameren claims that it achieved 36,494 kW of demand reduction through its energy efficiency programs. (Ameren BOE at 3.) Ameren relies on kW demand reductions presented in the energy efficiency evaluation reports filed in this proceeding, which Ameren highlights were not entered into the record at the evidentiary hearing.¹ (Ameren BOE at 3-4.) Ameren's proposal is inconsistent with established Commission policy concerning the crediting of peak demand savings, as discussed further below. The Commission should confirm, therefore, kW demand reductions achieved through the implementation of energy efficiency measures should not be used to satisfy the peak demand response targets set forth in Section 8-103(c) of the Act. See 220 ILCS 5/8-103(c).

When the Commission approved the plan involving PY3, (Ameren's Plan 1), it was not contemplated that kW demand reductions achieved through the implementation of energy efficiency measures would be used to satisfy the demand response targets

¹ While Ameren is technically correct that the evaluation reports are not in the record, the necessary information, derived from the evaluation reports, is contained in the record. See, *generally*, CUB Ex. 1.0. Based on CUB's reported values, in total, 644 p-stats were installed in PY2 and PY3. *Id.* Using these figures, it is clear that PY3 p-stats represent approximately 0.93% [= (6 PY3 installed p-stats)/(638 PY2 + 6 PY3 p-stats)] of the total p-stats the evaluation reports used to calculate demand savings of 564 kW from both PY2 and PY3 thermostats. Therefore, multiplying 0.93% by 564 kW results in 5.25 kW peak demand reductions from PY3 on the commercial side.

set forth in Section 8-103(c) of the Act. ICC Docket No. 07-0539, Order at 14-15 (Feb. 6, 2008). Indeed, Ameren proposed meeting the peak demand reduction target through its proposed residential and commercial demand response programs, which were ultimately approved by the Commission. *Id.*

It was in the Commission's Order governing Ameren's Plan 2 (PY4-PY6) where the Commission contemplated satisfying demand response targets through energy efficiency measures, as Ameren now suggests. ICC Docket No. 10-0568, Order at 27 (Dec. 21, 2010); Ameren BOE at 3. The Commission ultimately concluded that kW demand reductions achieved through the implementation of energy efficiency measures *could not* be used to satisfy the demand response targets set forth in Section 8-103(c) of the Act:

Ameren now argues, essentially, that it will meet the demand response requirements of Section 8-103(c) simply by implementing energy efficiency measures pursuant to Section 8-103(b) of the Act. At this time, the Commission is not convinced that this interpretation of the Act is correct.

ICC Docket No. 10-0568, Order at 27 (Dec. 21, 2010).

The foundation of Ameren's argument is essentially that the statutory definition of demand-response, namely "measures that decrease peak electricity demand or shift demand from peak to off-peak periods" could be interpreted to be broad enough to allow for really any "measures" that decrease peak electricity demand (e.g., energy efficiency) or shift demand from peak to off-peak periods (e.g., demand response programs) to qualify under the definition. 20 ILCS 3855/1-10. The Commission has not found persuasive arguments that "demand response" should be interpreted so broadly that energy efficiency measures should qualify as demand response. ICC Docket No. 10-0568, Order at 27 (Dec. 21, 2010); ICC Docket No. 13-0495, Order at 77 (Jan. 28,

2014). Rather, the Commission found Section 8-103(c) should be satisfied by implementing demand response, *not* energy efficiency, programs.

2. Peak Demand Reductions should be based on Technology Acquired Only During Particular Program Year

The Commission should adopt the ALJPO conclusion pertaining to the crediting of demand savings during the program year of acquisition and reject the Ameren recommendation to count demand savings from a single p-stat for numerous program years.

(a) Annualization

The Commission should adopt the ALJPO conclusion, and reject the Ameren position, which would allow PY3 savings credits for p-stats installed in PY2. (ALJPO at 5-6; Ameren BOE at 4.) “Annualization” of savings means regardless of what month the measure was installed during a program year, the Company is allowed to count the full annual savings amount as if the measure was installed and operational for an entire program year. ICC Docket No. 07-0539, Order at 21 (Feb. 6, 2008). The concept of “annualization” allows the utilities to actively manage their Plan to meet annual goals (i.e., it is a practical necessity for program management), and the Commission explicitly approved annualization of savings as reasonable in the Ameren Plan 1 Order. *Id.*

It would be inconsistent to also allow PY3 savings credits for p-stats installed in PY2 merely because that is when the “cycling off” occurred. See Ameren BOE at 4; ICC Docket No. 11-0593, Order at 3-4 (March 5, 2014). The Commission should not undue its reasonable policy by adopting Ameren’s position on demand response accounting.

(b) Timing and Duration “Off-Cycling” Accounting Creates Perverse Incentives

To the extent the Commission adopts Ameren’s position on this timing and duration “off-cycling” accounting issue, the residential demand response savings identified at pages 5-6 of Staff’s BOE and at page 3 of Ameren’s BOE would need to be adjusted. In particular, Staff analyzed Ameren’s residential demand response program savings using all 1,619 new customers to the program in PY3, resulting in 1,343.77 kW in demand response capability. (Staff BOE at 5.) However, only one “off-cycling” event occurred during PY3 for 23 residential customers. (CUB Ex. 1.0 at 4:49-50.) Therefore, should the Commission adopt Ameren’s proposal to measure demand response savings based on actual “off-cycling” events, then the residential demand response savings should be revised downward to equal 19.09 kW ($= 0.83 \text{ kW} \times 23 \text{ new p-stat customers participating in the “off-cycling” event during PY3}$). Interestingly, although Ameren advocates for including only “off-cycling” customers in the demand response savings calculations, Ameren provided residential demand response savings for all PY3 participants (i.e., 1,344 kW), including those that did *not* experience an “off-cycling” event in PY3. (Ameren BOE at 3.) The Commission should reject such inconsistent treatment proffered by Ameren and maintain the ALJPO’s conclusion on this issue while adopting the demand response savings capability proffered by Staff of 1,349.02 kW, which is less than the statutory peak demand reduction target of 5,263 kW. (Staff BOE at 5-8.)

(c) Adoption of Ameren’s Two Proposals Produces Nonsensical Results and Eliminates Need to Operate Any Demand Response Programs

Ameren's arguments that (1) energy efficiency savings should be credited as demand response; and (2) peak demand reductions due to cycling-off of equipment in a given Plan Year should related back to that Plan Year rather than the installation Plan Year, when taken together, produce nonsensical results. (Ameren BOE at 3-4.) If this were the case, no demand response efforts would need to be pursued by Ameren in PY4 through at least PY9 in order to meet each of its PY4-PY9 incremental Section 8-103(c) peak demand reduction goals, clearly inconsistent with the intent of the statute. (Ameren BOE at 3-4; 220 ILCS 5/8-103(c).) This is true because some energy efficiency measures included in Ameren's kW calculation for PY3 are given credit over multiple years, and the kW savings from those PY3 installed energy efficiency measures will largely still exist during the PY4-PY9 timeframe. These kW savings from PY3-installed measures are not *incremental* to PY4 or any future program year. Nonetheless, energy efficiency or demand response measures become the *status quo* after installation and they should not be attributable as Ameren's efforts in PY4 or beyond to meet the Section 8-103(c) goals. The Commission should conclude that the PY3-installed demand response measures are incremental to PY3 and should count towards the PY3 demand response goal set forth in Section 8-103(c) of the Act, consistent with the ALJPO findings on this issue. (ALJPO at 5-6.)

III. HOW TO CALCULATE THE SAVINGS GOAL

Staff supports the AG's Exception 1 that clarifies the undisputed amount of energy savings Ameren achieved in PY3. (AG BOE at 1-2.) Staff opposes Ameren's Exception 2, which mischaracterizes Staff's position. (Ameren BOE at 6-8.) The

Commission should adopt Staff's Exception 6, which provides more detail than the AG's proposed language for the Analysis and Conclusions section. (Staff BOE at 12.)

IV. BANKING OF ENERGY SAVINGS SHOULD BE CAPPED AT 10% OF THE PY COMPLIANCE OBLIGATION

Ameren states that "Ameren Illinois is entitled to bank 15% of the program year's compliance obligation, to be consistent with the determinations made by the Commission in Docket No. 11-0593." (Ameren BOE at 8.) As outlined on page 16 of Staff's BOE, the Commission *did not* allow ComEd to bank 15% of its excess energy savings in ICC Docket No. 11-0593. (Staff BOE at 8; see *also* ICC Docket No. 11-0593, Order at 18 (March 5, 2014).)

As an initial matter, given the instant PY3 savings goal compliance docket is for the last program year of Ameren's first energy efficiency plan governed by ICC Docket No. 07-0539 (Ameren's Plan 1 Order), it is appropriate to look for guidance in the Commission's Order governing Ameren's second energy efficiency Plan in ICC Docket No. 10-0568 (Ameren's Plan 2 Order) when determining whether any banked savings can be used going forward to be applied to those program years during Ameren's Plan 2 (i.e., PY4, PY5, PY6). The Commission concluded the following in Ameren's Plan 2 Order in regard to banking: "The Commission grants Ameren the ability to bank savings to the same extent such ability is granted to ComEd in Docket No. 10-0570." ICC Docket No. 10-0568, Order at 87 (Dec. 21, 2010).

In ICC Docket No. 11-0593, the Commission permitted a 10 percent banking limit to *accumulate* across the program years, as was approved in ICC Docket No. 10-0570. ICC Docket No. 10-0570, Order at 53-54 (Dec. 21, 2010); ICC Docket No. 11-0593, Order at 17 (March 5, 2014). Rather, in those dockets, the Commission limited

previously banked savings that could be used to help meet the statutory savings goal in any given program year during Plan 2 to 15% of the *compliance year's obligation*. *Id.* It is important to recognize this slight but very important distinction being made between (1) the *amount* of savings in excess of the statutory savings goal that may be *banked from a given program year*, and (2) the *amount of banked savings that can be used* in a given program year to meet *that* program year's statutory savings goal (i.e., compliance year's obligation). How much previously banked savings may be used to reach PY3's compliance obligation is not at issue in this proceeding because it is uncontested that Ameren and DCEO achieved the statutory energy savings goal without using any previously banked savings, and thus, there is no need to use any previously banked savings from ICC Docket No. 10-0519 in this docket. The amount of savings in excess of the statutory savings goal that *may be banked from* a given program year, however, is at issue in this proceeding. The Commission's Order in ICC Docket No. 10-0570 did not change the amount of incremental banking that *could occur from* each program year of Plan 1. Therefore, the Commission's 10% banking limitation from ICC Docket No. 07-0539 remains applicable for PY3 for purposes of this docket. ICC Docket No. 07-0539, Order at 29 (Feb. 6, 2008). The Commission should adopt the replacement language set forth in Staff's BOE that clarifies the appropriate banking calculations for Ameren consistent with the approach the Commission used for ComEd. (Staff BOE at 14-17.)

V. DCEO ENERGY SAVINGS ACHIEVEMENTS

Ameren states that "there is no evidence to which Ameren Illinois can refer to identify what DCEO's achieved savings were for PY3." (Ameren BOE at 9.) Similarly, the AG states that "conspicuously absent from this record is . . . any discussion as to

[DCEO's] performance related to energy savings achievement.” (AG BOE at 3.) Importantly, however, Staff filed testimony that was ultimately entered into the evidentiary record that identified DCEO's energy savings achievements for PY3, the values of which were based on the independent evaluation reports produced pursuant to Section 8-103(f)(7) of the Act. (See Staff BOE at 2.) The Initiating Order makes it clear that Ameren has the burden of proof in this proceeding and though Ameren did not request the evaluation reports of DCEO's programs nor did it provide those evaluation reports in this proceeding, Staff provided the energy savings estimates from the DCEO evaluation reports in testimony in this proceeding. See Initiating Order at 2 (Aug. 23, 2011); Staff Ex. 2.0 at 6.

DCEO's Third-Party Evaluator calculated the combined savings achieved by the public sector and low income programs to be 26,536 MWH in energy savings in the Ameren service territory. (Staff Ex. 2.0 at 6.) Specifically, Staff witness Hinman testified that “DCEO achieved 26,536 MWh during PY3.” *Id.*

To the extent the Commission wishes to have DCEO's evaluation reports produced in future energy savings goal compliance dockets for the Ameren service territory, consistent with the approach the Commission specified for the ComEd energy savings goal compliance dockets Initiating Orders in ICC Docket Nos. 13-0078 and 14-0075, the Commission should make this clear in its final Order in this docket, and stating that the DCEO independent evaluation reports should be addressed in the recently opened dockets pertaining to PY4 and PY5, ICC Docket Nos. 14-0594 and 14-0595, respectively. Below is suggested language pertaining to DCEO incorporated into a portion of Staff's Exception 8.

~~On Exceptions, Ameren shall state the amount of DCEO's energy savings, where in the record that can be found and it shall provide a breakdown of its calculations in accordance with this conclusion. Projected energy delivered should be used in calculating energy savings goals, and the overall statutory energy savings goal (inclusive of DCEO) must be achieved in order for any banking of energy savings to occur. In this proceeding, therefore, the Commission concludes that only savings in excess of 231,813 MWHs can be used in estimating the amount of energy that may be banked from PY3.~~

The Commission recognizes that DCEO did not actively participate in this proceeding. The Commission encourages DCEO to actively participate in future Commission proceedings evaluating Ameren's and DCEO's energy savings performance for future plan years, including but not limited to, PY4 and PY5, Dockets 14-0594 and 14-0595. The Commission acknowledges that Staff testified that DCEO's Third-Party Evaluators calculated DCEO's combined savings achieved by the public sector and low income programs to be 26,536 MWHs in the Ameren service territory in PY3. (See Staff Ex. 2.0 at 6.) The Commission also notes that no party in this proceeding has disputed the savings calculated for DCEO as set forth by Staff. Similarly, no party disputed the Third-Party Evaluators calculation of 263,374 MWHs of energy savings achieved by Ameren in PY3. Accordingly, the Commission finds that Ameren and DCEO achieved in total 289,910 MWHs of energy savings in PY3 (excluding previously banked energy savings), which exceeded the Section 8-103(b) statutory savings goal of 0.6% by 58,097 MWHs.

See ALJPO at 10.

VI. PLAN YEAR VERSUS PROGRAM YEAR

Ameren suggests that references to "Plan Year 3" should be changed to "Program Year 3" or simply "PY3" to avoid confusion. (Ameren BOE at 4, 10.) As these three terms are synonymous, Ameren's proposed change is not substantive. Nevertheless, to the extent such a change clarifies exposition, Staff does not object to it.

On the other hand, "Plan 3" is not synonymous with those other three terms because a "Plan" by itself consists of three "Program/Plan Years." Thus, in this regard, the Commission should adopt the following modified language changing "PY1" to "Plan

1” on page 7 of the ALJPO in order to reduce any potential confusion that Ameren believes may exist. The final Order in ICC Docket No. 07-0540 pertains to ComEd’s first three-year Plan, and thus for the sake of clarification it would be appropriate to reference the final Order as the *Plan 1 Order* and not *PY1 Order*.

In the final Order in Docket 07-0540, (the ~~PY~~Plan 1 Order) the Commission determined that it is not possible to have energy efficiency programs without incurring some overruns, or, excess energy savings, in any given plan year. *Commonwealth Edison Co., Petition for Approval of the Energy Efficiency and Demand Response Plan Pursuant to Section 12-103(f) of the Public Utilities Act*, Order of February 6, 2008, at 40-41.

See ALJPO at 7.

VII. CONCLUSION

For the reasons set forth above, Staff respectfully requests that the Commission’s Final Order in the instant proceeding reflect Staff’s recommendations consistent with this Reply Brief on Exceptions and Staff’s Brief on Exceptions.

Respectfully submitted,

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